



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

John Fitzgerald

Concord, CA 94518

MAR 22 2019

RE: MUR 7463  
John Fitzgerald for Congress  
John Fitzgerald

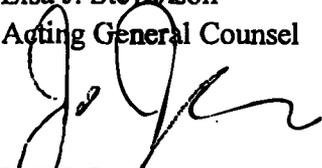
Dear Mr. Fitzgerald:

On August 13, 2018, the Federal Election Commission ("Commission") notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On March 14, 2019, based upon the information contained in the complaint and information provided by you, the Commission decided to dismiss allegations that John Fitzgerald for Congress, and you, violated provisions of the Act. The Commission then closed its file in this matter. A copy of the General Counsel's Report, which more fully explains the basis for the Commission's decision, is enclosed.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). If you have any questions, please contact Don Campbell, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Lisa J. Stevenson  
Acting General Counsel

BY:   
Jeff S. Jordan  
Assistant General Counsel

Enclosure:  
General Counsel's Report

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**BEFORE THE FEDERAL ELECTION COMMISSION**

**ENFORCEMENT PRIORITY SYSTEM  
DISMISSAL REPORT**

**MUR: 7463**

**Complaint Receipt Date: August 9, 2018**

**Response Date: September 4, 2018**

**Respondents: John Fitzgerald for Congress  
(the "Committee")  
John Fitzgerald<sup>1</sup>**

**EPS Rating:**

**Alleged Statutory/ 52 U.S.C. §§ 30101(2); 30102(b)(3), (e)(1) & (h)(1); 30103; 30104;  
30114(b); 30116**

**Regulatory Violations: 11 C.F.R. §§ 100.3(a)(1) and (2); 101.1(a); 102.1(a); 103.2; 103.3**

The Complaint alleges that Fitzgerald failed to register as a candidate, appoint an authorized committee and treasurer, and file disclosure reports, in violation of the Act and Commission regulations.<sup>2</sup> The Complaint also alleges that Fitzgerald is soliciting contributions through his personal PayPal account, not a committee account, which could result in personal use.<sup>3</sup> Fitzgerald responds that he neither raised nor spent \$5,000 in his campaign and, therefore, does not meet the Act's definition of a candidate, and is not required to register and report to the FEC, form a campaign committee, or appoint a treasurer.<sup>4</sup>

Based on its experience and expertise, the Commission has established an Enforcement Priority System using formal, pre-determined scoring criteria to allocate agency resources and assess whether particular matters warrant further administrative enforcement proceedings. These

<sup>1</sup> Fitzgerald ran for Congress from California's 11th Congressional District. Fitzgerald qualified for the general election, but lost that election by nearly 50% of the vote. See California Secretary of State, U.S. Representative Election Results, <https://elections.cdn.sos.ca.gov/sov/2018-general/sov/48-congress.pdf> (Last visited February 27, 2019).

<sup>2</sup> Compl. at 1, 2 (August 9, 2018). Fitzgerald previously ran in California's 7th Congressional District in 2010 and 11th Congressional District in 2012.

<sup>3</sup> The Complaint does not identify any specific instances of personal use of campaign funds. See Compl. at 1-4.

<sup>4</sup> Response at 1 (September 4, 2018). Fitzgerald states that the total amount of contributions PayPal forwarded to his campaign was \$889.20. *Id.* Fitzgerald did not indicate how much was spent on the campaign, except to note that it was less than \$5,000.

criteria include (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations and other developments in the law. This matter is rated as low priority for Commission action after application of these pre-established criteria. Given that low rating, and the apparently low dollar amount at issue, we recommend that the Commission dismiss the allegations consistent with the Commission's prosecutorial discretion to determine the proper ordering of its priorities and use of agency resources.<sup>5</sup> We also recommend that the Commission close the file as to all respondents and send the appropriate letters.

Lisa J. Stevenson  
Acting General Counsel

Charles Kitcher  
Acting Associate General Counsel  
for Enforcement

2/28/2019  
Date

BY: Stephen Gura  
Stephen Gura  
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<sup>5</sup> *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).